

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL RAY WEAVER
235 Swanton View Road
Davenport, CA 95017

Registered Nurse License No. 532247

Respondent

Case No. 2013-190

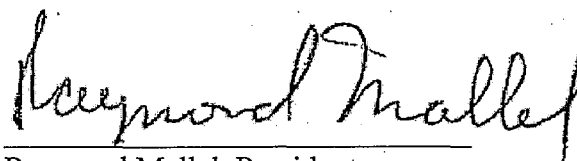
OAH No. 2012100105

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **May 16, 2013.**

IT IS SO ORDERED **April 16, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **MICHAEL RAY WEAVER**
235 Swanton View Road
14 Davenport, CA 95017
Registered Nurse License No. 532247

15 Respondent.

Case No. 2013-190

OAH No. 2012100105

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
20 Registered Nursing. She brought this action solely in her official capacity and is represented in
21 this matter by Kamala D. Harris, Attorney General of the State of California, by Kim M. Settles,
22 Deputy Attorney General.

23 2. Respondent Michael Ray Weaver (Respondent) is represented in this proceeding by
24 attorney Thomas N. Griffin, Esq., whose address is: Thomas N. Griffin, Esq., Grunsky, Ebey,
25 Farrar & Howell, 240 Westgate Drive, Watsonville, CA 95076.

26 3. On or about May 15, 1997, the Board of Registered Nursing issued Registered Nurse
27 License No. 532247 to Michael Ray Weaver (Respondent). The Registered Nurse License was in
28

1 full force and effect at all times relevant to the charges brought in Accusation No. 2013-190 and
2 will expire on March 31, 2013, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 2013-190 was filed before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on September
7 13, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2013-190 is attached as exhibit A and incorporated by
9 reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2013-190. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 2013-190.

27 10. Respondent agrees that his Registered Nurse License is subject to discipline and he
28 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order are intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 532247 issued to Respondent Michael Ray Weaver (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and

1 distinct condition. If any condition of this Order, or any application thereof, is declared
2 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
3 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
4 and enforceable to the fullest extent permitted by law.

5 **1. Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
6 detailed account of any and all violations of law shall be reported by Respondent to the Board in
7 writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with
8 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
9 45 days of the effective date of the decision, unless previously submitted as part of the licensure
10 application process.

11 **Criminal Court Orders:** If Respondent is under criminal court orders, including
12 probation or parole, and the order is violated, this shall be deemed a violation of these probation
13 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

14 **2. Comply with the Board's Probation Program.** Respondent shall fully comply with
15 the conditions of the Probation Program established by the Board and cooperate with
16 representatives of the Board in its monitoring and investigation of the Respondent's compliance
17 with the Board's Probation Program. Respondent shall inform the Board in writing within no
18 more than 15 days of any address change and shall at all times maintain an active, current license
19 status with the Board, including during any period of suspension.

20 Upon successful completion of probation, Respondent's license shall be fully restored.

21 **3. Report in Person.** Respondent, during the period of probation, shall appear in
22 person at interviews/meetings as directed by the Board or its designated representatives.

23 **4. Residency, Practice, or Licensure Outside of State.** Periods of residency or
24 practice as a registered nurse outside of California shall not apply toward a reduction of this
25 probation time period. Respondent's probation is tolled, if and when he resides outside of
26 California. Respondent must provide written notice to the Board within 15 days of any change of
27 residency or practice outside the state, and within 30 days prior to re-establishing residency or
28 returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

5. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. **Employment Approval and Reporting Requirements.** Respondent shall obtain

1 prior approval from the Board before commencing or continuing any employment, paid or
2 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
3 performance evaluations and other employment related reports as a registered nurse upon request
4 of the Board.

5 Respondent shall provide a copy of this Decision to his employer and immediate
6 supervisors prior to commencement of any nursing or other health care related employment.

7 In addition to the above, Respondent shall notify the Board in writing within seventy-two
8 (72) hours after he obtains any nursing or other health care related employment. Respondent
9 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
10 regardless of cause, from any nursing, or other health care related employment with a full
11 explanation of the circumstances surrounding the termination or separation.

12 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
13 Respondent's level of supervision and/or collaboration before commencing or continuing any
14 employment as a registered nurse, or education and training that includes patient care.

15 Respondent shall practice only under the direct supervision of a registered nurse in good
16 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
17 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
18 approved.

19 Respondent's level of supervision and/or collaboration may include, but is not limited to the
20 following:

21 (a) Maximum - The individual providing supervision and/or collaboration is present in
22 the patient care area or in any other work setting at all times.

23 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
24 care unit or in any other work setting at least half the hours Respondent works.

25 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
26 person communication with Respondent at least twice during each shift worked.

27 (d) Home Health Care - If Respondent is approved to work in the home health care
28 setting, the individual providing supervision and/or collaboration shall have person-to-person

1 communication with Respondent as required by the Board each work day. Respondent shall
2 maintain telephone or other telecommunication contact with the individual providing supervision
3 and/or collaboration as required by the Board during each work day. The individual providing
4 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
5 patients' homes visited by Respondent with or without Respondent present.

6 **9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any
7 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
8 or for an in-house nursing pool.

9 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
10 registered nursing supervision and other protections for home visits have been approved by the
11 Board. Respondent shall not work in any other registered nursing occupation where home visits
12 are required.

13 Respondent shall not work in any health care setting as a supervisor of registered nurses.
14 The Board may additionally restrict Respondent from supervising licensed vocational nurses
15 and/or unlicensed assistive personnel on a case-by-case basis.

16 Respondent shall not work as a faculty member in an approved school of nursing or as an
17 instructor in a Board approved continuing education program.

18 Respondent shall work only on a regularly assigned, identified and predetermined
19 worksite(s) and shall not work in a float capacity.

20 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
21 request documentation to determine whether there should be restrictions on the hours of work.

22 **10. Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and
23 successfully complete a course(s) relevant to the practice of registered nursing no later than six
24 months prior to the end of his probationary term.

25 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
26 Respondent shall submit to the Board the original transcripts or certificates of completion for the
27 above required course(s). The Board shall return the original documents to Respondent after
28 photocopying them for its records.

1 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with its
2 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
3 amount of \$4,617.50. Respondent shall be permitted to pay these costs in a payment plan
4 approved by the Board, with payments to be completed no later than three months prior to the end
5 of the probation term.

6 If Respondent has not complied with this condition during the probationary term, and
7 Respondent has presented sufficient documentation of his good faith efforts to comply with this
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
9 extension of Respondent's probation period up to one year without further hearing in order to
10 comply with this condition. During the one year extension, all original conditions of probation
11 will apply.

12 **12. Violation of Probation.** If Respondent violates the conditions of his probation, the
13 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
14 and impose the stayed discipline (revocation/suspension) of Respondent's license.

15 If during the period of probation, an accusation or petition to revoke probation has been
16 filed against Respondent's license or the Attorney General's Office has been requested to prepare
17 an accusation or petition to revoke probation against Respondent's license, the probationary
18 period shall automatically be extended and shall not expire until the accusation or petition has
19 been acted upon by the Board.

20 **13. License Surrender.** During Respondent's term of probation, if he ceases practicing
21 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
22 Respondent may surrender his license to the Board. The Board reserves the right to evaluate
23 Respondent's request and to exercise its discretion whether to grant the request, or to take any
24 other action deemed appropriate and reasonable under the circumstances, without further hearing.
25 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
26 subject to the conditions of probation.

27 Surrender of Respondent's license shall be considered a disciplinary action and shall
28 become a part of Respondent's license history with the Board. A registered nurse whose license

1 has been surrendered may petition the Board for reinstatement no sooner than the following
2 minimum periods from the effective date of the disciplinary decision;

3 (1) Two years for reinstatement of a license that was surrendered for any reason other
4 than a mental or physical illness; or

5 (2) One year for a license surrendered for a mental or physical illness.

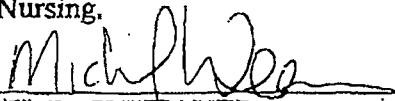
6 14. **Therapy or Counseling Program.** Respondent, at his expense, shall participate in
7 an on-going counseling program until such time as the Board releases him from this requirement
8 and only upon the recommendation of the counselor. Written progress reports from the counselor
9 will be required at various intervals.

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, Thomas N. Griffin, Esq. I understand the stipulation and the effect
13 it will have on my Registered Nurse License. I enter into this Stipulated Settlement and
14 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
15 Decision and Order of the Board of Registered Nursing.

16 DATED:

12/13/12

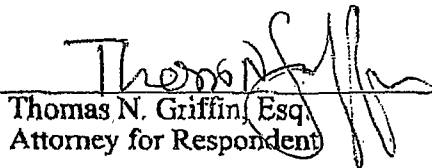


MICHAEL RAY WEAVER
Respondent

18 I have read and fully discussed with Respondent Michael Ray Weaver the terms and
19 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
20 I approve its form and content.

21 DATED:

12/14/2012



Thomas N. Griffin, Esq.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 12/14/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

Kim M. Settles
KIM M. SETTLES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2013-190

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-190*

13 **MICHAEL RAY WEAVER**
235 Swanton View Road
Davenport, CA 95017

A C C U S A T I O N

14 **Registered Nurse License No. 532247**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about May 15, 1997, the Board of Registered Nursing issued Registered Nurse
23 License Number 532247 to Michael Ray Weaver (Respondent). The Registered Nurse License
24 was in full force and effect at all times relevant to the charges brought in this Accusation and will
25 expire on March 31, 2013, unless renewed.

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1 "A registered nurse shall be considered to be competent when he/she consistently
2 demonstrates the ability to transfer scientific knowledge from social, biological and physical
3 sciences in applying the nursing process, as follows:

4 ...

5 "(5) Evaluates the effectiveness of the care plan through observation of the client's physical
6 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
7 communication with the client and health team members, and modifies the plan as needed.

8 "(6) Acts as the client's advocate, as circumstances require, by initiating action to improve
9 health care or to change decisions or activities which are against the interests or wishes of the
10 client, and by giving the client the opportunity to make informed decisions about health care
11 before it is provided."

12 **COST RECOVERY**

13 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 **CAUSE FOR DISCIPLINE**

18 **(Incompetence)**

19 11. On July 11, 2007, Patient A¹ was admitted to Dominican Hospital in Santa Cruz, with
20 a diagnosis of Cervical Myelopathy and Decompression. On July 12, 2007, a surgeon performed
21 a cervical fusion, excision of intervertebral disc, fusion/re-fusion of 2-3 vertebrae and insertion of
22 inter-body spinal fusion device. On July 14, 2007, at approximately 3:06 a.m. Respondent
23 charted the following: (1) Patient A was unsteady and wanted to use the bathroom, but adamantly
24 refused his assistance; (2) Respondent requested assistance from the charge nurse who assisted
25 Patient A with a bedside commode and returned her to bed; (3) Patient A removed her
26 intravenous (IV) access device and it was not restarted; (4) Patient A demanded to have neck

27 _____
28 ¹ The patient's name will be released to Respondent pursuant to a request for discovery.

1 brace removed; (5) Respondent will ask charge nurse to attempt to resolve situation; (6) A
2 search of the floor was unsuccessful in locating a "tab monitor."; (7) Floor is not in compliance
3 with staffing ratios, and Respondent expressed concern that his patients might be in jeopardy
4 because Patient A's needs made it impossible for him to care for his other patients.

5 On July 14, 2007, at approximately 6:20 a.m., Respondent observed that Patient A was alert
6 and resting in her bed. On July 14, 2007, at approximately 7:00 a.m., Respondent provided report
7 to the day shift registered nurse. On July 14, 2007, at approximately 7:10 a.m., Patient A was
8 observed crosswise on her bed in full cardiac arrest. Patient A had no IV access device and
9 attempts to start IV access were unsuccessful. Patient A expired at approximately 7:30 a.m.

10 12. Respondent has subjected his license to disciplinary action under Code section 2761,
11 subdivision (a)(1) on the grounds of incompetence, in that on July 14, 2007, while employed as a
12 registered nurse at Dominican Hospital in Santa Cruz, California, Respondent engaged in the
13 following acts and/or omissions in his treatment of Patient A:

14 a. Respondent failed to document that the physician was notified when Patient A's
15 cognitive condition had changed and that Patient A had pulled out her IV access device.

16 b. Respondent did not insert an IV access device and there was no physician's
17 order to leave the IV access device out after Patient A had removed it.

18 c. Respondent failed to follow the hospital policy and procedures for routine care
19 of medical/surgical patients.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
22 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 532247, issued to
24 Michael Ray Weaver;

25 2. Ordering Michael Ray Weaver to pay the Board of Registered Nursing the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: September 13, 2012

for *Stacie Ben*
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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